

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-090114
		C-090115
Plaintiff-Appellee,	:	TRIAL NOS. B-0708416A
		B-0805088
vs.	:	
KIPP JAMES,	:	
		<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Kipp James appeals the Hamilton County Common Pleas Court's judgment overruling his Crim.R. 32.1 motions to withdraw his guilty pleas. We affirm the court's judgment.

James entered guilty pleas to a single count of drug trafficking in the case numbered B-0708416 and to two counts of drug trafficking in the case numbered B-0805088. Following a hearing, the trial court accepted the pleas, found James guilty, and continued the cases for sentencing. Before sentencing, James moved to withdraw his pleas. Following a hearing, the trial court overruled the motions, imposed concurrent sentences totaling six years, and entered judgment accordingly. These appeals followed.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

James presents on appeal a single assignment of error, challenging the overruling of his motions to withdraw his pleas. The challenge is untenable.

The court's decision to overrule the motions was properly informed by the relevant factors.<sup>2</sup>

In accepting the pleas, the court had scrupulously complied with Crim.R. 11. At the hearing on the motions to withdraw the pleas, the court afforded James and his new counsel a full and fair opportunity to present the case for withdrawal.

And in support of his motions to withdraw his pleas, James failed to demonstrate any possibility that a trial on the charges would end in an acquittal. He sought to withdraw his pleas on the ground that the pleas had been the unknowing and unintelligent product of his trial counsel's ineffectiveness in failing to adequately investigate possible defenses to the charges. At the hearing on the motions, he insisted that the buyer in the "controlled buy" underlying the 2007 trafficking charge would exonerate him in the transaction. And he asserted that he had not owned the car that he had been driving and that had contained the evidence supporting the 2008 trafficking charges. But James offered no evidence to support his claims of innocence or to counter the state's claims that law enforcement officials had also witnessed the 2007 "controlled buy," and that James had constructively possessed the evidence supporting the 2008 charges.

On the record before us, James's counsel cannot be said to have violated a substantial duty to James in advising him to plead guilty to the trafficking charges. Therefore, counsel was not ineffective in that regard.<sup>3</sup>

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<sup>2</sup> See *State v. Cuthbertson* (2000), 139 Ohio App.3d 895, 899-900, 746 N.E.2d 197, citing *State v. Fish* (1995), 104 Ohio App.3d 236, 240, 661 N.E.2d 788.

Because James failed to demonstrate at the hearing “a reasonable and legitimate basis for the withdrawal of the plea[s],” we hold that the trial court did not abuse its discretion in overruling James’s Crim.R. 32.1 motions.<sup>4</sup> Accordingly, we overrule the assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on April 7, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>3</sup> See *State v. Xie* (1992), 62 Ohio St.3d 521, 524, 584 N.E.2d 715, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, and *Hill v. Lockhart* (1985), 474 U.S. 52, 59, 106 S.Ct. 366.

<sup>4</sup> See *id.*, paragraphs one and two of the syllabus.